

HOUSE BILL NO. 328

INTRODUCED BY C. HARRIS

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY CONSIDER AN APPLICANT'S COMPLIANCE RECORD IN MAKING A DECISION AS TO WHETHER TO DENY OR APPROVE AN AIR QUALITY PERMIT; ALLOWING THE DEPARTMENT TO DENY AN AIR QUALITY PERMIT IF AN APPLICANT HAS A RECORD OF SUBSTANTIAL AND REOCCURRING NONCOMPLIANCE; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-2-211, MCA, is amended to read:

**"75-2-211. (Temporary) Permits for construction, installation, alteration, or use.** (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b), not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;

- 1 (f) procedures for the transfer of permits;
- 2 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
3 department;
- 4 (h) requirements and procedures for appropriate emission limitations and other requirements, including  
5 enforceable measures necessary to ensure compliance with those limitations and requirements;
- 6 (i) requirements and procedures for permit modification and amendment; and
- 7 (j) requirements and procedures for issuing a single permit authorizing emissions from similar  
8 operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance  
9 with the requirements of this chapter at all authorized locations and a requirement that the owner or operator  
10 notify the department in advance of each change in location.
- 11 (4) This section does not restrict the board's authority to adopt regulations providing for a single air  
12 quality permit system.
- 13 (5) Department approval of an application to transfer a portable emission source from one location to  
14 another is exempt from the provisions of 75-1-201(1).
- 15 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
16 appropriate applications.
- 17 (7) The department shall require that applications for permits be accompanied by any plans,  
18 specifications, and other information that it considers necessary.
- 19 (8) An application is not considered filed until the applicant has submitted all fees required under  
20 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)  
21 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
22 an application that the application is incomplete and fails to list the reasons why the application is considered  
23 incomplete, the application is considered filed as of the date of the purported filing.
- 24 (9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of  
25 an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1  
26 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:
- 27 (i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the  
28 department prepares the environmental impact statement;
- 29 (ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state  
30 agency other than the department has been designated by the governor as lead agency for preparation of the

1 environmental impact statement; or

2 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a  
3 permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement  
4 in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

5 (b) If an application does not require the preparation of an environmental impact statement, the  
6 department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided  
7 in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30  
8 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted  
9 by the department on request of the applicant. Notification of approval or denial may be served personally or  
10 by certified mail on the applicant or the applicant's agent.

11 (c) If an application for a permit is for the construction, installation, alteration, or use of a source that  
12 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department  
13 shall act on the permit application within the time period provided for in 75-2-215(3)(e).

14 (d) Failure by the department to act in a timely manner does not constitute approval or denial of the  
15 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
16 the department to act in a timely manner.

17 (10) When the department approves or denies the application for a permit under this section, a person  
18 who is jointly or severally adversely affected by the department's decision may request a hearing before the  
19 board. The request for hearing must be filed within 15 days after the department renders its decision and must  
20 include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana  
21 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this  
22 subsection.

23 (11) The department's decision on the application is not final unless 15 days have elapsed from the date  
24 of the decision and there is no request for a hearing under this section. The filing of a request for a hearing  
25 postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a  
26 final decision by the board.

27 (12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written  
28 notice that its application is considered filed pursuant to subsection (8) may:

29 (i) for a temporary power generation unit or units with a total electrical generation capacity of not more  
30 than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the

1 department's issuance of a permit under this section.

2 (ii) for a temporary power generation unit or units with a total electrical generating capacity of 10  
3 megawatts or less, construct and operate the unit or units.

4 (b) The construction or operation of a temporary power generation unit or units described in subsection  
5 (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units  
6 continues after a department decision to deny the permit application becomes final as provided in this section.

7 (c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation  
8 unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the  
9 department's deadline any additional information that is necessary to process the permit application.

10 (ii) The operation of a permit applicant's temporary power generation unit or units described in  
11 subsection (12)(a) may not violate ambient air quality standards.

12 (d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire  
13 no later than 2 years from the date that the department received the permit application and must require removal  
14 of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for  
15 permanent operation has been issued.

16 (13) (a) The department shall consider an applicant's compliance record, if any, with the provisions of  
17 the federal Clean Air Act, 42 U.S.C. 7401, et seq., or with the provisions of this chapter in making a decision as  
18 to whether to deny or approve a permit.

19 (b) If the department determines that an applicant has a record of substantial and reoccurring  
20 noncompliance with the provisions of this chapter, the department may deny or condition the permit. (Terminates  
21 July 1, 2005--sec. 4, Ch. 588, L. 2001.)

22 **75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use.** (1) The  
23 board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit  
24 issued under this part.

25 (2) Except as provided in 75-1-208(4)(b), not later than 180 days before construction, installation, or  
26 alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may  
27 directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the  
28 emission of air pollutants, the owner or operator shall file with the department the appropriate permit application  
29 on forms available from the department.

30 (3) The permit program administered by the department pursuant to this section must include the

1 following:

2 (a) requirements and procedures for permit applications, including standard application forms;

3 (b) requirements and procedures for submittal of information necessary to determine the location,  
4 quantity, and type of emissions;

5 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

6 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal  
7 agencies, as appropriate;

8 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

9 (f) procedures for the transfer of permits;

10 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
11 department;

12 (h) requirements and procedures for appropriate emission limitations and other requirements, including  
13 enforceable measures necessary to ensure compliance with those limitations and requirements;

14 (i) requirements and procedures for permit modification and amendment; and

15 (j) requirements and procedures for issuing a single permit authorizing emissions from similar  
16 operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance  
17 with the requirements of this chapter at all authorized locations and a requirement that the owner or operator  
18 notify the department in advance of each change in location.

19 (4) This section does not restrict the board's authority to adopt regulations providing for a single air  
20 quality permit system.

21 (5) Department approval of an application to transfer a portable emission source from one location to  
22 another is exempt from the provisions of 75-1-201(1).

23 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
24 appropriate applications.

25 (7) The department shall require that applications for permits be accompanied by any plans,  
26 specifications, and other information that it considers necessary.

27 (8) An application is not considered filed until the applicant has submitted all fees required under  
28 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)  
29 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of  
30 an application that the application is incomplete and fails to list the reasons why the application is considered

1 incomplete, the application is considered filed as of the date of the purported filing.

2 (9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of  
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7 (ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state  
8 agency other than the department has been designated by the governor as lead agency for preparation of the  
9 environmental impact statement; or

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11 permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement  
12 in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

13 (b) If an application does not require the preparation of an environmental impact statement, the  
14 department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided  
15 in subsection (8), of its approval or denial of the application. The time for notification may be extended for 30  
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22 (d) Failure by the department to act in a timely manner does not constitute approval or denial of the  
23 application. This does not limit or abridge the right of any person to seek available judicial remedies to require  
24 the department to act in a timely manner.

25 (10) When the department approves or denies the application for a permit under this section, a person  
26 who is jointly or severally adversely affected by the department's decision may request a hearing before the  
27 board. The request for hearing must be filed within 15 days after the department renders its decision and must  
28 include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana  
29 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this  
30 subsection.

1           (11) The department's decision on the application is not final unless 15 days have elapsed from the date  
2 of the decision and there is no request for a hearing under this section. The filing of a request for a hearing  
3 postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a  
4 final decision by the board.

5           (12) (a) The department shall consider an applicant's compliance record, if any, with the provisions of  
6 the federal Clean Air Act, 42 U.S.C. 7401, et seq., or with the provisions of this chapter in making a decision as  
7 to whether to deny or approve a permit.

8           (b) If the department determines that an applicant has a record of substantial and reoccurring  
9 noncompliance with the provisions of this chapter, the department may deny or condition the permit."

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11           NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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